

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0401**

State of Minnesota,  
Respondent,

vs.

Leslie Herman Wheeler,  
Appellant.

**Filed January 30, 2023  
Affirmed  
Wheelock, Judge**

Dakota County District Court  
File No. 19HA-CR-21-1348

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kathryn M. Keena, Dakota County Attorney, Jessica A. Bierwerth, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and Wheelock, Judge.

**NONPRECEDENTIAL OPINION**

**WHEELOCK, Judge**

Appellant argues that the district court abused its discretion in denying his motion for a downward dispositional departure after he pleaded guilty to fifth-degree controlled-substance possession and gross-misdemeanor domestic assault. Because the

record shows the district court carefully evaluated the reasons for and against departure in determining that appellant was not particularly amenable to probation, we affirm.

## **FACTS**

Respondent State of Minnesota charged appellant Leslie Herman Wheeler with one count of felony fifth-degree possession of a controlled substance and two counts of domestic assault. According to the complaint, police responded to a hotel in Eagan, where the victim told police that her ex-boyfriend, whom she identified as Wheeler, assaulted her by punching her multiple times and putting his hands around her throat. Wheeler was apprehended, placed under arrest, and transported to jail, where he was found to be in possession of 0.13 grams of methamphetamine.

Wheeler pleaded guilty to one count of fifth-degree controlled-substance possession and one count of domestic assault with intent to cause fear. Wheeler informed the district court that on the basis of a chemical-dependency evaluation performed in custody, he had been accepted into an inpatient treatment program with follow-up care in an intensive outpatient program in Rochester. Wheeler stated that he intended to move for a sentencing departure. The district court set the matter for sentencing at a later date to allow for a presentence investigation (PSI) and, as a condition of release, ordered Wheeler to report to and comply with the chemical-dependency treatment program in Rochester.

Less than two months after Wheeler's release, the state alleged a presentence-release violation for failure to comply with inpatient treatment. Specifically, it alleged that although Wheeler had completed inpatient treatment and transitioned to intensive outpatient treatment at a halfway house, he left the halfway house after five days

and was discharged from the program for continued unexcused absences, that he failed to cooperate with the PSI, and that he did not remain in contact with probation after leaving inpatient treatment. The district court ordered that Wheeler's presentence release be revoked and that he be taken into custody.

While in custody, Wheeler participated in the PSI, and probation filed the PSI report with the district court. At the sentencing hearing, the district court accepted Wheeler's guilty pleas and heard Wheeler's argument supporting his motion for a downward dispositional departure. The state argued against a downward dispositional departure and in favor of the guidelines sentence, consistent with the PSI recommendation. The district court denied Wheeler's motion for a downward dispositional departure and sentenced Wheeler to 24 months in prison, stating that it could not find substantial and compelling reasons demonstrating his particular amenability to probation.

Wheeler appeals.

### **DECISION**

The Minnesota Sentencing Guidelines establish presumptive sentences for criminal offenses for which imprisonment is appropriate. Minn. Stat. § 244.09, subd. 5(2) (2020). The district court "must pronounce a sentence of the applicable disposition . . . unless there exist identifiable, substantial, and compelling circumstances to support a departure." Minn. Sent'g Guidelines 2.D.1 (2020); *see State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (further stating a district court may depart from the guidelines sentence "*only if* aggravating or mitigating circumstances are present, and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence" (quotations omitted)). Appellate

courts review a district court's sentencing decision for an abuse of discretion. *Soto*, 855 N.W.2d at 307-08. When a district court imposes a presumptive sentence, an appellate court "may not interfere with the [district] court's exercise of discretion, as long as the record shows the [district] court carefully evaluated all the testimony and information presented before making a determination." *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted). Only in a "rare case" will an appellate court reverse a sentencing court's refusal to depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

One factor that may serve as the basis for a sentencing departure is the offender's particular amenability to probation. Minn. Sent'g Guidelines 2.D.3.a(7) (2020). This factor may be supported by the offender's amenability to treatment in a probationary setting. *Id.* Particular amenability to probation "distinguishes the defendant from most others and truly presents the substantial and compelling circumstances necessary to justify a departure." Minn. Sent'g Guidelines cmt. 2.D.303 (2020) (citing *Soto*, 855 N.W.2d at 309).

"A dispositional departure places the offender in a different setting than that called for by the presumptive guidelines sentence." *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). A district court considers the characteristics of the offender to determine whether the offender is "particularly suitable for individualized treatment in a probationary setting." *Id.* (quotation omitted). Factors relevant to particular amenability to probation that can justify a downward dispositional departure include the defendant's age, prior record, remorse, cooperation, attitude while in court, and the support of friends or family, to which courts sometimes refer as the "*Trog* factors." *Soto*, 855 N.W.2d at 310 (quoting *State v.*

*Trog*, 323 N.W.2d 28, 31 (Minn. 1982)). Even if a defendant would be particularly amenable to probation, a district court is not required to impose a downward dispositional departure. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009).

Wheeler asserts that he demonstrated particular amenability to individualized treatment in a probationary setting, pointing out that he completed one inpatient treatment program pending sentencing and arranged for a second inpatient treatment program following sentencing in the event the district court granted a downward dispositional departure. Notwithstanding that Wheeler completed the inpatient phase of his treatment while on presentence release, he was discharged from the intensive outpatient portion of his treatment program for unexcused absences shortly after transitioning to the outpatient program. While in custody following his failure to comply with treatment recommendations, Wheeler was accepted into a different inpatient treatment program, but this arrangement resulted from a recommendation in the chemical-dependency evaluation required as part of the PSI. The record does not indicate that Wheeler took the initiative to arrange for additional treatment, as Wheeler suggests.

Wheeler explained to the district court that he was “rushed back into the world” without a proper graduation from inpatient treatment because his counselor was out sick for the last four days of the inpatient portion of his program, he was discharged from inpatient treatment two days early, and the outpatient halfway house was not a good fit for him. By contrast, the state noted that Wheeler had previously participated in chemical-dependency treatment without long-term success and had absconded while on probation more than five times since 2019.

The record shows that the district court considered Wheeler's amenability to probation based on all the testimony and evidence. As to the circumstances of Wheeler's presentence-release violation, the district court observed that due to "the most recent . . . furlough and the choice that unfortunately, [Wheeler] made probably while under the throes of addiction," it was unable to find that Wheeler was particularly amenable to probation.

Wheeler further makes an argument based on each of the *Trog* factors to demonstrate his amenability to probation and support a downward dispositional departure. With regard to his criminal history, Wheeler notes that prior to the instant offense, he had no convictions for crimes against a person in the past ten years and that his third-degree controlled-substance conviction in 2016 would be considered a fifth-degree offense under current law. He argues that the record demonstrates his remorse and motivation to change because he stated to the district court that he makes "no excuses" for his failures on probation; he has a "checkered past," but he is "tired of living like that"; and he desires to "continue with [his] treatment" and "work closely with probation." Wheeler further asserts that his attitude while in court and cooperation with the judicial process weigh in favor of a dispositional departure. Finally, Wheeler asserts that the support of friends and family weighs in favor of a dispositional departure, relying on his statements to the district court that he takes pride in the good that he does, he has "a lot of people that can actually vouch" for him, and he is motivated to improve for the sake of his children.

The record, however, does not support Wheeler's arguments; it instead supports the district court's decision not to depart. Wheeler's criminal history includes a felony

fifth-degree controlled-substance conviction, three prior felony convictions for domestic assault, two felony convictions for violating no-contact orders, and multiple misdemeanor and gross-misdemeanor convictions dating back to 2003. While acknowledging that “everybody comes before [the district court] with a history” and without “going all the way back” into Wheeler’s record, the district court was not convinced that Wheeler’s criminal history supported departure. As to his age, Wheeler provides no reason for why, at 39 years old when sentenced, his age weighs in favor of departure.

The district court considered and expressed appreciation for Wheeler’s statements of remorse, noting that it was clear that Wheeler had “some significant insight” and recognizing Wheeler’s “acknowledgement that . . . drug use and drug addiction has devastated [Wheeler’s] life.” But the district court determined that the record did not establish substantial and compelling reasons to depart. And while the record shows Wheeler’s conduct before the district court was appropriate and respectful, Wheeler provides no indication of how this respectful attitude rises to a level that “distinguishes” him from “most others” or otherwise presents the “substantial and compelling circumstances that are necessary to justify a departure.” *See Soto*, 855 N.W.2d at 309 (quotation omitted).

Wheeler asserts that his cooperation with law enforcement and the judicial process favors departure, claiming that missing the PSI appointment while on release was an unintentional oversight on his part. To the contrary, the record shows that Wheeler violated his presentence release by failing to complete the outpatient portion of his court-ordered treatment program, complete a PSI, and remain in contact with probation. The record also

does not demonstrate that Wheeler has meaningful support in the community to help him succeed on probation. He makes a general claim that others can “vouch for him,” but the record contains nothing indicating support from any specific individuals.

The district court also heard the state’s arguments that (1) Wheeler’s current offense happened while he was on supervised release; (2) Wheeler’s history on supervised release since early 2019 is marked by his frequently absconding and failing to participate in probation; (3) Wheeler was unsuccessful in past attempts at court-ordered chemical-dependency treatment; and (4) Wheeler’s criminal history is comprised of controlled-substance crimes and violent offenses while under the influence.

Our review confirms that the district court heard and considered Wheeler’s arguments for and the state’s arguments against Wheeler’s motion for a downward dispositional departure, it evaluated all the evidence before it, and it did not find substantial and compelling reasons to justify a departure. The district court acted within its discretion in denying Wheeler’s motion. *See Pegel*, 795 N.W.2d at 255 (affirming district court’s exercise of discretion not to depart when record demonstrated it deliberately considered circumstances for and against departure). Moreover, we have long held that even if there are reasons supporting a dispositional departure, a district court does not abuse its discretion by imposing the presumptive guidelines sentence. *See State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985) (stating a district court is not required to give reasons when it elects to impose a presumptive sentence, and so long as the record shows the court evaluated the information presented before deciding, the reviewing court will not interfere).



Based on this record, we conclude that the district court did not abuse its discretion in determining that Wheeler did not establish substantial and compelling reasons supporting his claim of particular amenability to probation and pronouncing a guidelines sentence. And the facts do not support a conclusion that this is the “rare case” that we would reverse. *See Kindem*, 313 N.W.2d at 7.

**Affirmed.**